

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BANK OF AMERICA CORP.
SECURITIES, DERIVATIVE, AND
EMPLOYMENT RETIREMENT INCOME
SECURITY ACT (ERISA) LITIGATION

Master File No. 09 MDL 2058 (PKC)
ECF CASE

THIS DOCUMENT RELATES TO

The Consolidated Securities Class Action

**DECLARATION OF
AUDRA J. SOLOWAY**

AUDRA J. SOLOWAY declares:

1. I am a partner of the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel for defendants Bank of America Corporation and Banc of America Securities LLC (together, “BofA”). I submit this declaration in support of the accompanying Memorandum of Law in Support of BofA’s Memorandum of Law in Response to Objections to Proposed Class Action Settlement, dated March 29, 2013.

2. Attached hereto as Exhibit A is a true and correct copy of the article “New York Comptroller Sues Bank of America,” by Chad Bray, which was published in the *Wall Street Journal* on July 23, 2010.

3. Attached hereto as Exhibit B is a true and correct copy of the article “New York Sues Bank of America and Merrill Over Merger,” which was published in the *New York Times* on July 23, 2010.

4. Attached hereto as Exhibit C is a true and correct copy of the article “Merrill, Former Leaders Paying to Settle Suit,” by Chad Bray, which was published in the *Wall Street Journal* on January 13, 2011.

5. Attached hereto as Exhibit D is a true and correct copy of excerpts from BofA's Form 10-K filed with the United States Securities and Exchange Commission on February 25, 2011.

6. In accordance with 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
March 29, 2013

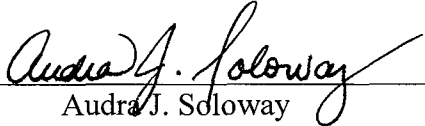

Audra J. Soloway

EXHIBIT A



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THE WALL STREET JOURNAL.
The Wall Street Journal Online

July 23, 2010

SECTION: NEW YORK; Pg. NY News

LENGTH: 285 words

HEADLINE: New York Comptroller Sues Bank of America

BYLINE: By Chad Bray

BODY:

NEW YORK-New York State Comptroller Thomas DiNapoli sued Bank of America Corp. and its Merrill Lynch & Co. unit Thursday, opting out of prior class-action litigation against the bank.

Robert Whalen, a spokesman for Mr. DiNapoli, said the comptroller decided to pursue his own lawsuits because his lawyers believe they have a "greater chance at a better recovery."

In the lawsuits, Mr. DiNapoli claims Merrill Lynch made false and misleading statements about its exposure to subprime mortgage-backed assets and its risk management prior to its merger with Bank of America. The \$50 billion merger closed Jan. 1, 2009.

The comptroller also claims Bank of America failed to conduct adequate due diligence and failed to disclose the true extent of the investment bank's fourth-quarter losses prior to the acquisition.

"These companies thought they could get away with profiting at the expense of New York's pensioners and taxpayers through fraudulent activities and misleading public disclosures, and they were mistaken," Mr. DiNapoli said in a statement.

Mr. DiNapoli is the sole trustee of the New York State Common Retirement Fund, the state's largest pension fund. Mr. DiNapoli said the fund is worth \$132.6 billion in a press release Thursday.

By pursuing his own lawsuits in federal court in Manhattan, Mr. DiNapoli opted out of 2007 shareholder litigation against Merrill Lynch and 2009 litigation against Bank of America.

In February, a federal judge signed off on a \$150 million settlement by Bank of America of a lawsuit by the Securities and Exchange Commission over the bank's disclosures prior to the merger.

A Bank of America spokeswoman declined comment Thursday.

Write to Chad Bray at chad.bray@dowjones.com

NOTES:

PUBLISHER: Dow Jones & Company, Inc.

LOAD-DATE: December 21, 2010

EXHIBIT B



Copyright 2010 The New York Times Company
The New York Times

July 23, 2010 Friday
Late Edition - Final

SECTION: Section B; Column 0; Business/Financial Desk; Pg. 8

LENGTH: 399 words

HEADLINE: New York Sues Bank of America and Merrill Over Merger

BYLINE: By REUTERS

BODY:

New York State is suing Bank of America and its Merrill Lynch unit over the companies' merger and Merrill's sub-prime mortgage issues.

The New York State comptroller, Thomas P. DiNapoli, filed two lawsuits on Thursday in Federal District Court in Manhattan to recover losses suffered by the \$132.5 billion state pension fund, which he oversees.

Defendants include Kenneth D. Lewis, former chief executive of Bank of America; Joe L. Price, the bank's former chief financial officer who is now the bank's president of consumer and small-business banking; and E. Stanley O'Neal, Merrill's former chief executive.

Mr. DiNapoli filed the lawsuits after choosing to "opt out" of 2007 shareholder litigation against Merrill and 2009 litigation against Bank of America.

"Our attorneys believe this gives us a chance to get a better recovery," perhaps reaching "tens of millions of dollars," said Robert Whalen, a spokesman for the comptroller's office.

The pension fund owned 3.06 million Bank of America shares and 4.83 million Merrill shares, court records show.

Bill Halldin, a spokesman for Bank of America, declined to comment.

One complaint in the suit accuses Bank of America of misleading shareholders about Merrill's losses as it prepared to buy the Wall Street bank in late 2008. The other accuses Merrill of misleading shareholders about its risk management and exposures to mortgage securities and collateralized debt obligations.

"These companies thought they could get away with profiting at the expense of New York's pensioners and taxpayers through fraudulent activities and misleading public disclosures," Mr. DiNapoli said in a statement. "They were mistaken."

Bank of America agreed to buy Merrill on Sept. 15, 2008. Merrill lost \$15.8 billion in the fourth quarter of that year, though it paid out \$3.6 billion in bonuses. The merger was completed on Jan. 1, 2009.

In February, United States District Judge Jed S. Rakoff accepted Bank of America's \$150 million settlement with the Securities and Exchange Commission on charges that it had misled shareholders about the merger, an accord he called "half-baked justice at best."

The New York attorney general, Andrew M. Cuomo, has separately filed civil fraud charges against Bank of America, Mr. Lewis and Mr. Price.

Mr. DiNapoli is running for re-election as comptroller in November. Mr. Cuomo is running for governor. Both are Democrats.

URL: <http://www.nytimes.com>

LOAD-DATE: July 23, 2010

EXHIBIT C



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THE WALL STREET JOURNAL.
The Wall Street Journal Online

January 13, 2011

SECTION: BUSINESS; Pg. Business

LENGTH: 240 words

HEADLINE: Merrill, Former Leaders Paying to Settle Suit

BYLINE: By Chad Bray

BODY:

NEW YORK-Bank of America Corp.'s Merrill Lynch unit and two former top executives will pay \$4.25 million to settle a lawsuit by the state's largest pension fund over Merrill Lynch's role in the subprime mortgage crisis, New York Comptroller Thomas DiNapoli said Thursday.

The \$132.8 billion New York State Common Retirement Fund opted out of a class-action lawsuit and filed its own suit in July, alleging Merrill Lynch made false and misleading statements about its exposure to subprime-mortgage-backed assets and its risk management prior to its merger with Bank of America. The \$50 billion merger closed Jan. 1, 2009.

At the time, the comptroller's office, which acts as trustee for the retirement fund, indicated it believed it could receive a higher recovery by pursuing its own lawsuit.

"The fund was misled about the extent of Merrill Lynch's participation in the subprime mortgage fiasco; that is unacceptable," Mr. DiNapoli said.

E. Stanley O'Neal, Merrill Lynch's former chief executive, and Jeffery N. Edwards, its former vice chairman, also are part of the settlement.

The parties moved to dismiss the case, filed in federal court in Manhattan, in November. The court briefly retained jurisdiction over the case at the time in case a settlement wasn't reached.

A Merrill Lynch spokesman and lawyers for Mr. O'Neal and Mr. Davis didn't immediately return phone calls seeking comment Thursday.

Write to Chad Bray at chad.bray@dowjones.com

NOTES:

PUBLISHER: Dow Jones & Company, Inc.

LOAD-DATE: January 14, 2011

EXHIBIT D

Table of Contents

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended December 31, 2010

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____
Commission file number:
1-6523

Exact name of registrant as specified in its charter:

Bank of America Corporation

State or other jurisdiction of incorporation or organization:

Delaware

IRS Employer Identification No.:

56-0906609

Address of principal executive offices:

Bank of America Corporate Center

100 North Tryon Street

Charlotte, North Carolina 28255

Registrant's telephone number, including area code:

(704) 386-5681

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT:

| Title of each class | Name of each exchange on which registered |
|--|--|
| Common Stock, par value \$0.01 per share | New York Stock Exchange London Stock Exchange Tokyo Stock Exchange |
| Depository Shares, each Representing a 1/1,000 th interest in a share of 6.204% Non-Cumulative Preferred Stock, Series D | New York Stock Exchange |
| Depository Shares, each Representing a 1/1,000 th interest in a share of Floating Rate Non-Cumulative Preferred Stock, Series E | New York Stock Exchange |
| Depository Shares, each Representing a 1/1,000 th Interest in a Share of 8.20% Non-Cumulative Preferred Stock, Series H | New York Stock Exchange |
| Depository Shares, each Representing a 1/1,000 th interest in a share of 6.625% Non-Cumulative Preferred Stock, Series I | New York Stock Exchange |
| Depository Shares, each Representing a 1/1,000 th interest in a share of 7.25% Non-Cumulative Preferred Stock, Series J | New York Stock Exchange |
| 7.25% Non-Cumulative Perpetual Convertible Preferred Stock, Series L | New York Stock Exchange |
| Depository Shares, each representing a 1/1,200 th interest in a share of Bank of America Corporation Floating Rate Non-Cumulative Preferred Stock, Series 1 | New York Stock Exchange |
| Depository Shares, each representing a 1/1,200 th interest in a share of Bank of America Corporation Floating Rate Non-Cumulative Preferred Stock, Series 2 | New York Stock Exchange |
| Depository Shares, each representing a 1/1,200 th interest in a share of Bank of America Corporation 6.375% Non-Cumulative Preferred Stock, Series 3 | New York Stock Exchange |
| Depository Shares, each representing a 1/1,200 th interest in a share of Bank of America Corporation Floating Rate Non-Cumulative Preferred Stock, Series 4 | New York Stock Exchange |
| Depository Shares, each representing a 1/1,200 th interest in a share of Bank of America Corporation Floating Rate Non-Cumulative Preferred Stock, Series 5 | New York Stock Exchange |
| Depository Shares, each representing a 1/40 th interest in a share of Bank of America Corporation 6.70% Non-cumulative Perpetual Preferred Stock, Series 6 | New York Stock Exchange |
| Depository Shares, each representing a 1/40 th interest in a share of Bank of America Corporation 6.25% Non-cumulative Perpetual Preferred Stock, Series 7 | New York Stock Exchange |
| Depository Shares, each representing a 1/1,200 th interest in a share of Bank of America Corporation 8.625% Non-Cumulative Preferred Stock, Series 8 | New York Stock Exchange |
| 6.75% Trust Preferred Securities of Countrywide Capital IV (and the guarantees related thereto) | New York Stock Exchange |
| 7.00% Capital Securities of Countrywide Capital V (and the guarantees | New York Stock Exchange |

| | |
|---|-------------------------|
| related thereto) | New York Stock Exchange |
| Capital Securities of BAC Capital Trust I (and the guarantee related thereto) | New York Stock Exchange |
| Capital Securities of BAC Capital Trust II (and the guarantee related thereto) | New York Stock Exchange |
| Capital Securities of BAC Capital Trust III (and the guarantee related thereto) | New York Stock Exchange |
| 5 ⁷ / ₈ % Capital Securities of BAC Capital Trust IV (and the guarantee related thereto) | New York Stock Exchange |
| 6% Capital Securities of BAC Capital Trust V (and the guarantee related thereto) | New York Stock Exchange |
| 6% Capital Securities of BAC Capital Trust VIII (and the guarantee related thereto) | New York Stock Exchange |
| 6 ¹ / ₄ % Capital Securities of BAC Capital Trust X (and the guarantee related thereto) | New York Stock Exchange |
| 6 ⁷ / ₈ % Capital Securities of BAC Capital Trust XII (and the guarantee related thereto) | New York Stock Exchange |

Table of Contents

securities. Plaintiffs claim that MLPFS and MLI did not adequately disclose the credit quality and other risks of the CDO securities and underlying collateral. The complaint alleges claims for fraud, negligent misrepresentation, breach of the implied covenant of good faith and fair dealing and breach of contract and seeks rescission and unspecified compensatory and punitive damages, among other relief. On April 9, 2010, the court granted defendants' motion to dismiss as to the fraud, negligent misrepresentation, breach of the implied covenant of good faith and fair dealing and rescission claims, as well as a portion of the breach of contract claim. Plaintiffs have appealed the dismissal of their claims and MLI has cross-appealed the denial of its motion to dismiss the breach of contract claim in its entirety. On February 1, 2011, the appellate court dismissed the case against MLI in its entirety. MBIA has filed a request to appeal the appellate court's decision to the New York State Court of Appeals and has requested permission from the trial court to file an amended complaint.

Merrill Lynch Acquisition-related Matters

Since January 2009, the Corporation and certain of its current and former officers and directors, among others, have been named as defendants in a variety of actions filed in state and federal courts relating to the Corporation's acquisition of Merrill Lynch (the Acquisition). These acquisition-related cases consist of securities actions, derivative actions and actions under ERISA. The claims in these actions generally concern (i) the Acquisition; (ii) the financial condition and 2008 fourth-quarter losses experienced by the Corporation and Merrill Lynch; (iii) due diligence conducted in connection with the Acquisition; (iv) the Corporation's agreement that Merrill Lynch could pay up to \$5.8 billion in bonus payments to Merrill Lynch employees; (v) the Corporation's discussions with government officials in December 2008 regarding the Corporation's consideration of invoking the material adverse change clause in the Acquisition agreement and the possibility of obtaining government assistance in completing the Acquisition; and/or (vi) alleged material misrepresentations and/or material omissions in the proxy statement and related materials for the Acquisition.

Securities Actions

Plaintiffs in the putative securities class actions in the *In re Bank of America Securities, Derivative and Employment Retirement Income Security Act (ERISA) Litigation* (Securities Plaintiffs) represent all (i) purchasers of the Corporation's common and preferred securities between September 15, 2008 and January 21, 2009; (ii) holders of the Corporation's common stock or Series B Preferred Stock as of October 10, 2008; and (iii) purchasers of the Corporation's common stock issued in the offering that occurred on or about October 7, 2008. During the purported class period, the Corporation had between 4,560,112,687 and 5,017,579,321 common shares outstanding and the price of those securities declined from \$33.74 on September 12, 2008 to \$6.68 on January 21, 2009. Securities Plaintiffs claim violations of Sections 10(b), 14(a) and 20(a) of the Securities Exchange Act of 1934, and SEC rules promulgated thereunder. Securities Plaintiffs' amended complaint also alleges violations of Sections 11, 12(a)(2) and 15 of the Securities Act of 1933 related to an offering of the Corporation's common stock that occurred on or about October 7, 2008, and names BAS and MLPFS, among others, as defendants on the Section 11 and 12(a)(2) claims. The Corporation and its co-defendants filed motions to dismiss, which the court granted in part by dismissing certain of the Securities Plaintiffs' claims under Section 10(b) of the Securities Exchange Act of 1934. Securities Plaintiffs have filed a second amended complaint which seeks to replead some of the dismissed claims as well as add claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 on behalf of holders of certain debt, preferred securities and option securities. The Corporation and its co-defendants have filed a motion to dismiss the second amended complaint's new and amended

allegations, which remains pending. Securities Plaintiffs seek unspecified monetary damages, legal costs and attorneys' fees.

Several individual plaintiffs have opted to pursue claims apart from the *In re Bank of America Securities, Derivative, and Employment Retirement Income Security Act (ERISA) Litigation* and, accordingly, have initiated individual actions relying on substantially the same facts and claims as the Securities Plaintiffs in the U.S. District Court for the Southern District of New York.

On January 13, 2010, the Corporation, Merrill Lynch and certain of the Corporation's current and former officers and directors were named in a purported class action filed in the U.S. District Court for the Southern District of New York entitled *Dornfest v. Bank of America Corp., et al.* The action is purportedly brought on behalf of investors in Corporation option contracts between September 15, 2008 and January 22, 2009 and alleges that during the class period approximately 9.5 million Corporation call option contracts and approximately eight million Corporation put option contracts were already traded on seven of the Options Clearing Corporation exchanges. The complaint alleges that defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and SEC rules promulgated thereunder. On April 9, 2010, the court consolidated this action with the consolidated securities action in the *In re Bank of America Securities, Derivative and Employment Retirement Income Security Act (ERISA) Litigation*, and ruled that the plaintiffs may pursue the action as an individual action. Plaintiffs seek unspecified monetary damages, legal costs and attorneys' fees.

Derivative Actions

Several of the derivative actions related to the Acquisition that were pending in the Delaware Court of Chancery were consolidated under the caption *In re Bank of America Corporation Stockholder Derivative Litigation*. In addition, the MDL ordered the transfer of actions related to the Acquisition that had been pending in various federal courts to the U.S. District Court for the Southern District of New York for coordinated or consolidated pretrial proceedings. These actions have been separately consolidated and are now pending under the caption *In re Bank of America Securities, Derivative, and Employment Retirement Income Security Act (ERISA) Litigation*.

On October 9, 2009, plaintiffs in the derivative actions in the *In re Bank of America Securities, Derivative and Employment Retirement Income Security Act (ERISA) Litigation* (the Derivative Plaintiffs) filed a consolidated amended derivative and class action complaint. The amended complaint names as defendants certain of the Corporation's current and former directors, officers and financial advisors, and certain of Merrill Lynch's current and former directors and officers. The Corporation is named as a nominal defendant with respect to the derivative claims. The amended complaint asserts claims for, among other things: (i) violation of federal securities laws; (ii) breach of fiduciary duties; (iii) the return of incentive compensation that is alleged to be inappropriate in view of the work performed and the results achieved by certain of the defendants; and (iv) contribution in connection with the Corporation's exposure to significant liability under state and federal law. The amended complaint seeks unspecified monetary damages, equitable remedies and other relief. On February 8, 2010, the Derivative Plaintiffs voluntarily dismissed their claims against each of the former Merrill Lynch officers and directors without prejudice. The Corporation and its co-defendants filed motions to dismiss, which were granted in part on August 27, 2010. On October 18, 2010, the Corporation and its co-defendants answered the remaining allegations asserted by the Derivative Plaintiffs.

On February 17, 2010, an alleged shareholder of the Corporation filed a purported derivative action, entitled *Bahnmaier v. Lewis, et al.*, in the U.S. District Court for the Southern District of New York. The complaint names as defendants certain of the Corporation's current and former directors and officers, and one of Merrill Lynch's former officers. The complaint alleges, among other things, that the individual defendants breached their fiduciary

Table of Contents

Signatures

Pursuant to the requirements of Section 13 of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: February 25, 2011

Bank of America Corporation

By: /s/ Brian T. Moynihan
 Brian T. Moynihan
 Chief Executive Officer and President

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|---|-------------------|
| <u>/s/ Brian T. Moynihan</u> Brian T. Moynihan | Chief Executive Officer, President and Director (Principal Executive Officer) | February 25, 2011 |
| <u>/s/ Charles H. Noski</u> Charles H. Noski | Chief Financial Officer and Executive Vice President (Principal Financial Officer) | February 25, 2011 |
| <u>/s/ Neil A. Cotty</u> Neil A. Cotty | Chief Accounting Officer (Principal Accounting Officer) | February 25, 2011 |
| <u>/s/ Susan S. Bies</u> Susan S. Bies | Director | February 25, 2011 |
| <u>/s/ William P. Boardman</u> William P. Boardman | Director | February 25, 2011 |
| <u>/s/ Frank P. Bramble, Sr.</u> Frank P. Bramble, Sr. | Director | February 25, 2011 |
| <u>/s/ Virgis W. Colbert</u> Virgis W. Colbert | Director | February 25, 2011 |
| <u>/s/ Charles K. Gifford</u> Charles K. Gifford | Director | February 25, 2011 |
| <u>/s/ Charles O. Holliday, Jr.</u> Charles O. Holliday, Jr. | Director | February 25, 2011 |
| <u>/s/ D. Paul Jones</u> D. Paul Jones | Director | February 25, 2011 |
| <u>/s/ Monica C. Lozano</u> Monica C. Lozano | Director | February 25, 2011 |
| <u>/s/ Thomas J. May</u> Thomas J. May | Director | February 25, 2011 |
| <u>/s/ Donald E. Powell</u> Donald E. Powell | Director | February 25, 2011 |

Table of Contents

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|--------------|-------------------|
| <u>*/s/ Charles O. Rossotti</u> Charles O. Rossotti | Director | February 25, 2011 |
| <u>*/s/ Robert W. Scully</u> Robert W. Scully | Director | February 25, 2011 |
| <u>*By:/s/ Craig T. Beazer</u> Craig T. Beazer Attorney-in-Fact | | |